

# Dealing with a self-represented party

This bulletin explains the term “self-represented party”, real estate agents’ obligations when dealing with a self-represented party, and the assistance an agent is permitted to provide to a self-represented party.

## Summary

When dealing with a self-represented party, an agent can satisfy their obligations by doing the following:

1. Verify that the party is or intends to be self-represented.
2. Provide and explain the content of the *RECO Information Guide* and the *RECO Information and Disclosure to Self-represented Party form*.
3. Use best efforts to obtain an acknowledgement that the *Information and Disclosure to Self-represented Party form* was provided.
4. Only provide assistance that is:
  - a service provided to, or incidental to a service provided to the client;
  - in the best interests of the client, and;
  - consistent with the client’s instructions.

*Note: The assistance must meet all three criteria.*

## What is a self-represented party?

A self-represented party, with respect to a trade in real estate, is a person who is not a client of a brokerage. A self-represented party is, as the term indicates, representing their own interests in the trade and is not receiving any services under an agreement with a brokerage.

There are two important points to keep in mind when considering the rules that apply when dealing with a self-represented party:

1. You will only encounter a self-represented party in a trade — when you are representing either the buyer or the seller.
2. A self-represented party is a person who has decided not to hire a brokerage, meaning they chose not to benefit from the services, opinions, and advice that a real estate agent can offer.

A prospective client, or a consumer asking general questions about the real estate market is not a self-represented party. However, agents must be careful not to act in a way that might create an implied representation agreement when dealing with any person.

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Implied representation can arise when agents begin providing services, opinions, or advice to any person without a written agreement in place. A written agreement clarifies the relationship, including the services to be provided and the type of representation — brokerage representation or designated representation — and creates an entitlement to remuneration.

## Before providing any assistance

### STEP 1: VERIFY THE PARTY INTENDS TO BE SELF-REPRESENTED

It's important to confirm if a person is represented, seeking representation, or wants to proceed without the services and representation a brokerage can offer. The *RECO Information Guide* can be used to support this discussion by making the risks clear.

For example, some potential buyers may believe they will get a "better deal" or will be the beneficiary of "commission savings" if they proceed without the services and representation of a brokerage. They may also believe the seller's agent can "help" them and they do not need their own agent.

In this scenario, the seller's agent could explain that the perceived savings are a result of foregoing the advice, opinions, and expertise an agent can offer. The only assistance the seller's agent might provide to a self-represented buyer will be to benefit the seller. The self-represented buyer will have to navigate the transaction on their own, including the purchase price and any protective clauses to be included in an offer. This may result in unforeseen consequences and costs for the self-represented buyer.

### STEP 2: PROVIDE AND EXPLAIN THE RECO INFORMATION GUIDE AND THE INFORMATION AND DISCLOSURE TO SELF-REPRESENTED PARTY FORM

Agents **must** provide the self-represented party with the *RECO Information and Disclosure to Self-represented Party* form, along with the *RECO Information Guide*, **before** providing any assistance to a self-represented party.

The purpose of the *Information and Disclosure to Self-represented Party* form is to ensure that a person who decides to proceed as a self-represented party, and might receive assistance, understands:

- the risks of receiving assistance from an agent who is protecting and promoting the best interests of the party on the other side of the transaction;
- the limited nature of the assistance they might receive; and,
- they should seek independent professional advice before proceeding.

### STEP 3: CLEAR COMMUNICATION

In addition to providing the *Information and Disclosure to Self-represented Party* form, agents must clearly communicate these messages to the self-represented party:

- I am representing my client and my client's best interests.
- I do not represent you or your best interests.
- I cannot provide you with any services, opinions, or advice.
- Any assistance I might provide to you is to benefit my client and their interests.
- Any information, including confidential information, that you share with me will be shared with my client, as part of my duties to them.

#### STEP 4: ACKNOWLEDGEMENT

Agents must make best efforts to obtain an acknowledgement that the information was received and, if the self-represented party makes the acknowledgement, provide them with a copy of their acknowledgement.

### Assistance to a self-represented party

Agents are **prohibited** from providing services, opinions, or advice to a self-represented party in respect of a trade, including an opinion or advice on the price, terms, or clauses to include in an offer.

Agents can provide **assistance** to a self-represented party if the assistance is a service to the agent's client, or incidental to a service to the agent's client.

What assistance an agent might provide to a self-represented party will depend on the representation agreement with their client and on the client's lawful instructions.

When considering what assistance is permitted, agents are advised to ask themselves these questions:

- Is the assistance a service to or incidental to a service to my client and consistent with my client's instructions?
- Is the assistance in the best interests of my client?
- Is the assistance free from any opinions or advice to the self-represented party?
- Can I provide the assistance without encouraging the self-represented party to rely on my knowledge, skill, or judgment in respect of the trade?

#### CAUTION WHEN PROVIDING ASSISTANCE

Even if the *RECO Information Guide* and *Information and Disclosure to Self-represented Party* form are provided to the self-represented party and the self-represented party acknowledges receiving them, agents should take care when dealing with a self-represented party.

The risk is in exercising discretion or judgment, giving advice, offering opinions, or advocating on behalf of the self-represented party in an attempt to be helpful. If handled improperly, agents risk creating an implied representation agreement and, as a result, creating a multiple representation situation that brings its own disclosure and consent requirements.

If a self-represented party indicates that they need more help than the agent is permitted to provide by way of assistance as a service to their client, the agent should encourage them to find another agent to provide the services they need. A self-represented party is free to enter into a representation agreement with a brokerage at any point.

### RECO's online tool

To support agents in meeting their obligations, RECO has developed an online tool to facilitate electronic sharing of the *Information and Disclosure to Self-represented Party* form. It will also provide email confirmation to the agent that the form was provided and, if the person acknowledges it was provided, email confirmation of that acknowledgement to the self-represented party and the agent.

## Related information

Bulletin No. 2.1 RECO Information Guide

*Information and Disclosure to Self-Represented Party form*

*RECO Information Guide*